

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

PERRY MATLOCK,)	
)	
Plaintiff,)	
)	
v.)	No. CIV-22-498-R
)	
REDBIRD BUSINESS GROUP, LLC and)	
REDBIRD VENTURES LLC,)	
)	
Defendants.)	

ORDER

Before the Court is Plaintiff’s Motion for Voluntary Dismissal Without Prejudice of Remaining Causes of Action [Doc. No. 54]. The Court previously granted summary judgment in Plaintiff’s favor as to his breach of contract claim and denied summary judgment as to his remaining causes of action. *See* Order of May 31, 2023 [Doc. No. 48]. Plaintiff now wishes to dismiss his remaining causes of action without prejudice pursuant to Rule 41(a)(2) in order to convert the summary judgment into a final judgment.

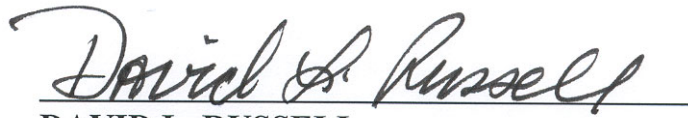
Rule 41(a)(2) “governs voluntary dismissals after the opposing party has filed an answer or motion for summary judgment.” *Clark v. Tansy*, 13 F.3d 1407, 1411 (10th Cir. 1993). “Dismissal under Rule 41(a)(2) is within the sound discretion of the court.” *Id.* “When considering a motion to dismiss without prejudice, ‘the important aspect is whether the opposing party will suffer prejudice in the light of the valid interests of the parties.’” *Id.* (quoting *Barber v. General Electric Co.*, 648 F.2d 1272, 1275 (10th Cir.1981)). There are a number of factors that may be considered, including “the opposing party’s effort and expense of preparation for trial, excessive delay and lack of diligence on the part of the

movant in prosecuting the action, and insufficient explanation for the need to take a dismissal.” *Id.* (quotation marks and brackets omitted).

None of these factors weigh against granting the voluntary dismissal in this case. Plaintiff has provided an adequate explanation for seeking the dismissal and has prosecuted the action with reasonable diligence. This matter is not currently set on a trial docket and Defendants do not appear to have put forth any significant effort or expense to prepare for trial. Moreover, Defendants have failed to respond to the instant motion and it can therefore be deemed confessed. *See* LCvR7.1(g).

Upon consideration, Plaintiff’s Motion for Voluntary Dismissal Without Prejudice of Remaining Causes of Action [Doc. No. 54] is GRANTED. Other than the breach of contract claim asserted against RedBird Business Group, all causes of action are dismissed without prejudice.

IT IS SO ORDERED this 1st day of September 2023.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE